

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

MATTHEW J. SILVA,

Plaintiff,

v.

STATE OF NEVADA et al.,

Defendants.

2:16-cv-00348-RFB-NJK

ORDER

I. DISCUSSION

On March 20, 2017, the Court issued a screening order permitting Plaintiff's American with Disabilities Act, Rehabilitation Act, and Equal Protection Clause claims to proceed against Defendant John/Jane Doe caseworker when Plaintiff learned of his or her identity. (ECF No. 9 at 7). The Court stated that, if Plaintiff was able to discover the identity of John/Jane Doe caseworker, Plaintiff shall file a motion to substitute the name of the Doe defendant in the complaint. (*Id.* at 8). If Plaintiff timely filed a motion to substitute identifying the name of the Doe caseworker, the Court would issue an order staying the case and referring the case to the Inmate Early Mediation Program. (*Id.*)

On March 29, 2017, Plaintiff filed a motion to substitute the name of John Doe in the complaint to Thomas J. Martinez, CCSII. (ECF No. 12 at 1-2). The Court grants the motion to substitute John Doe caseworker as Defendant Thomas J. Martinez, CCSII.

The Court denies Plaintiff's supplemental motion to submit exhibits as to why his case should be reopened (ECF No. 7) as moot. The Court reopened Plaintiff's case in the screening order. (ECF No. 9 at 1-2).

....

1 **II. CONCLUSION**

2 For the foregoing reasons, IT IS ORDERED that the motion to substitute the name of
3 John Doe in the complaint to Thomas J. Martinez, CCSII (ECF No. 12) is GRANTED.

4 IT IS FURTHER ORDERED that the Clerk of the Court shall add Thomas J. Martinez,
5 CCSII as a defendant in this case.

6 IT IS FURTHER ORDERED that the John Doe caseworker referenced in the screening
7 order is identified as Defendant Thomas J. Martinez.

8 IT IS FURTHER ORDERED that, pursuant to the Court's screening order (ECF No. 9),
9 this action shall proceed on the American with Disabilities Act, Rehabilitation Act, and Equal
10 Protection Clause claims against Defendant Thomas J. Martinez.

11 IT IS FURTHER ORDERED that given the nature of the claim(s) that the Court has
12 permitted to proceed, this action is **STAYED** for ninety (90) days to allow Plaintiff and
13 Defendant(s) an opportunity to settle their dispute before the \$350.00 filing fee is paid, an
14 answer is filed, or the discovery process begins. During this ninety-day stay period, no other
15 pleadings or papers shall be filed in this case, and the parties shall not engage in any
16 discovery. The Court will refer this case to the Court's Inmate Early Mediation Program, and
17 the Court will enter a subsequent order. Regardless, on or before ninety (90) days from the
18 date this order is entered, the Office of the Attorney General shall file the report form attached
19 to this order regarding the results of the 90-day stay, even if a stipulation for dismissal is
20 entered prior to the end of the 90-day stay. If the parties proceed with this action, the Court
21 will then issue an order setting a date for Defendants to file an answer or other response.
22 Following the filing of an answer, the Court will issue a scheduling order setting discovery and
23 dispositive motion deadlines.

24 IT IS FURTHER ORDERED that "settlement" may or may not include payment of
25 money damages. It also may or may not include an agreement to resolve Plaintiff's issues
26 differently. A compromise agreement is one in which neither party is completely satisfied with
27 the result, but both have given something up and both have obtained something in return.
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1 IT IS FURTHER ORDERED that if the case does not settle, Plaintiff will be required to
2 pay the full \$350.00 filing fee. This fee cannot be waived. If Plaintiff is allowed to proceed *in*
3 *forma pauperis*, the fee will be paid in installments from his prison trust account. 28 U.S.C.
4 § 1915(b). If Plaintiff is not allowed to proceed *in forma pauperis*, the \$350.00 will be due
5 immediately.

6 IT IS FURTHER ORDERED that if any party seeks to have this case excluded from the
7 inmate mediation program, that party shall file a "motion to exclude case from mediation" on
8 or before twenty-one (21) days from the date of this order. The responding party shall have
9 seven (7) days to file a response. No reply shall be filed. Thereafter, the Court will issue an
10 order, set the matter for hearing, or both.

11 IT IS FURTHER ORDERED that the Clerk of the Court shall electronically **SERVE** a
12 copy of this order, the original screening order (ECF No. 9) and a copy of Plaintiff's complaint
13 (ECF No. 10) on the Office of the Attorney General of the State of Nevada, attention Kat
14 Howe.

15 IT IS FURTHER ORDERED that the Attorney General's Office shall advise the Court
16 within twenty-one (21) days of the date of the entry of this order whether it will enter a limited
17 notice of appearance on behalf of Defendants for the purpose of settlement. No defenses or
18 objections, including lack of service, shall be waived as a result of the filing of the limited notice
19 of appearance.

20 IT IS FURTHER ORDERED that the supplemental motion to submit exhibits (ECF No.
21 7) is DENIED as moot.

22
23 DATED: This 3rd day of April, 2017.

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25 
26 NANCY J. KOPPE
27 United States Magistrate Judge
28

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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REPORT OF ATTORNEY GENERAL
RE: RESULTS OF 90-DAY STAY

**NOTE: ONLY THE OFFICE OF THE ATTORNEY GENERAL SHALL FILE THIS FORM. THE
INMATE PLAINTIFF SHALL NOT FILE THIS FORM.**

On _____ [*the date of the issuance of the screening order*], the Court issued its screening order stating that it had conducted its screening pursuant to 28 U.S.C. § 1915A, and that certain specified claims in this case would proceed. The Court ordered the Office of the Attorney General of the State of Nevada to file a report ninety (90) days after the date of the entry of the Court's screening order to indicate the status of the case at the end of the 90-day stay. By filing this form, the Office of the Attorney General hereby complies.

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REPORT FORM

[Identify which of the following two situations (identified in bold type) describes the case, and follow the instructions corresponding to the proper statement.]

Situation One: Mediated Case: The case was assigned to mediation by a court-appointed mediator during the 90-day stay. [If this statement is accurate, check **ONE** of the six statements below and fill in any additional information as required, then proceed to the signature block.]

_____ A mediation session with a court-appointed mediator was held on _____ [enter date], and as of this date, the parties have reached a settlement (even if paperwork to memorialize the settlement remains to be completed). (If this box is checked, the parties are on notice that they must SEPARATELY file either a contemporaneous stipulation of dismissal or a motion requesting that the Court continue the stay in the case until a specified date upon which they will file a stipulation of dismissal.)

_____ A mediation session with a court-appointed mediator was held on _____ [enter date], and as of this date, the parties have not reached a settlement. The Office of the Attorney General therefore informs the Court of its intent to proceed with this action.

_____ No mediation session with a court-appointed mediator was held during the 90-day stay, but the parties have nevertheless settled the case. (If this box is checked, the parties are on notice that they must SEPARATELY file a contemporaneous stipulation of dismissal or a motion requesting that the Court continue the stay in this case until a specified date upon which they will file a stipulation of dismissal.)

_____ No mediation session with a court-appointed mediator was held during the 90-day stay, but one is currently scheduled for _____ [enter date].

_____ No mediation session with a court-appointed mediator was held during the 90-day stay, and as of this date, no date certain has been scheduled for such a session.

_____ None of the above five statements describes the status of this case. Contemporaneously with the filing of this report, the Office of the Attorney General of the State of Nevada is filing a separate document detailing the status of this case.

* * * * *

Situation Two: Informal Settlement Discussions Case: The case was NOT assigned to mediation with a court-appointed mediator during the 90-day stay; rather, the parties were encouraged to engage in informal settlement negotiations. [If this statement is accurate, check **ONE** of the four statements below and fill in any additional information as required, then proceed to the signature block.]

_____ The parties engaged in settlement discussions and as of this date, the parties have reached a settlement (even if the paperwork to memorialize the settlement remains to be completed). (If this box is checked, the parties are on notice that they must SEPARATELY file either a contemporaneous stipulation of dismissal or a motion requesting that the Court continue the stay in this case until a specified date upon which they will file a stipulation of dismissal.)

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_____ The parties engaged in settlement discussions and as of this date, the parties have not reached a settlement. The Office of the Attorney General therefore informs the Court of its intent to proceed with this action.

_____ The parties have not engaged in settlement discussions and as of this date, the parties have not reached a settlement. The Office of the Attorney General therefore informs the Court of its intent to proceed with this action.

_____ None of the above three statements fully describes the status of this case. Contemporaneously with the filing of this report, the Office of the Attorney General of the State of Nevada is filing a separate document detailing the status of this case.

Submitted this _____ day of _____, _____ by:

Attorney Name: _____
Print Signature

Address: _____ Phone: _____
_____ Email: _____